IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeals No.7 & 115 of 1993

Decided on : October 11, 2007

Cr.A No.7 of 1993

Sita Ram **…Appellant-accused.**

Versus

State of H.P. **…Respondent.**

Cr.A No.115 of 1993

State of H.P. **…Appellant.**

Versus

Sita Ram **…Respondent-accused.**

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The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant-Accused : **M/s Dushyant Dadwal & Dheeraj Sharma, Advocates.**

For the Respondent : **Mr. D.S. Nainta, Deputy Advocate General.**

Surjit Singh, Judge(Oral)

Heard and gone through the record.

2. By this common judgment two appeals, whose titles and particulars are given above, are being disposed of, as both of them are directed against the same judgment of the trial Court, whereby Sita Ram, appellant in Criminal Appeal No.7 of 1993 and respondent in Criminal Appeal No.115 of 1993, hereinafter called accused, sent up for trial for offences punishable under Sections 307, 336, 342 IPC and Section 25 of the Arms Act, has been convicted of offences punishable under Sections 326, 342 IPC and Section 25 of the Arms Act and

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Whether reporters of the local papers may be allowed to see the judgment?

sentenced to pay a fine of Rs.10,000/- for the offence under Section 326 IPC, to pay a fine of Rs.1000/- for offence under Section 342 IPC and a fine of Rs.1000/- for offence under Section 25 of the Arms Act, and out of the amount of fine imposed in respect of offence under Section 326 IPC, a sum of Rs.3000/- has been ordered to be paid as compensation to injured Daulat Ram (PW-2).

3. Appeal No.7 of 1993 has been filed by accused Sita Ram challenging his conviction and sentence. The other appeal, i.e., Criminal Appeal No.115 of 1993, has been filed by the State of Himachal Pradesh for enhancement of punishment and conviction of the accused for offence punishable under Section 307 IPC.

4. Accused was sent up for trial by the Police on the following allegations. On 27.6.1986, a bus belonging to HRTC, which was being driven by PW-4 Tulsi Ram, left Tharoch for Nerva at 6.30 a.m. Around 7.30 a.m. when the bus reached a place called Mushrah, accused appeared in front of it with a loaded .12 gun. The driver stopped the bus. Accused did not allow the driver to move the bus and threatened that in case an attempt was made to move it he would shoot him dead. Some passengers travelling by the bus told the driver of the bus that the accused was lunatic and would withdraw within 10-15 minutes of his own. When for about half an hour the accused showed no signs of withdrawal, some passengers, including PW-1 Jai Ram, PW-2 Daulat Ram, PW-5 Agya Vallabh Shastri, alighted from the bus and tried to persuade the accused to withdraw and allow the bus to move but he did not budge. Thereafter, all those who had alighted from the bus, except PW-2 Daulat Ram, withdrew, but Daulat Ram continued to persuade the accused. The accused then fired a shot at PW-2 Daulat Ram, which hit him in the abdomen. He sat down holding

his abdomen. Accused reloaded his gun to scare other passengers from coming near him or from trying to move the bus. Ultimately, the accused was overpowered by PW-3 Mohan Singh. He was disarmed and tied with a rope and taken to the Police Station. Daulat Ram was taken to the hospital at Nerva. There first aid was provided to him. Then he was shifted to Snodown Hospital at Shimla where he was treated. He had suffered various gun shot injuries, two of which were opined to be dangerous to life.

5. Accused took the plea of insanity. Trial Court has disbelieved the same and convicted the accused of the offences punishable under Sections 326, 342 IPC and Section 25 of the Arms Act and sentenced, as aforesaid.

6. We may, at the very outset, say that the trial Court was not justified in awarding the punishment of fine only in respect of offences under Section 326 IPC and Section 25 of the Arms Act. Section 326 IPC provides for punishment of imprisonment and fine, both. Similarly, Section 25 of the Arms Act provides for minimum sentence of imprisonment. Thus, the punishments awarded by the trial Court in respect of these two offences are in violation of the statutory provisions.

7. However, we find a good deal of force in the pea of the accused that he did not understand the nature of his act, because he was suffering from insanity at the relevant time. He examined a number of witnesses, including his brother, his wife, and his maternal uncle and a doctor from Dharampur from whom he was got treated in the year 1989 or say three years after the incident. Trial Court disbelieved their evidence holding that it was contradictory because some witnesses had stated that he had been suffering from mental

ailment for 3-4 years prior to incident and others stated that he was suffering from such ailment for the last 10-12 years and also because he was treated more than three years after the incident by the doctor-witness from Dharampur.

8. Trial Court has overlooked the prosecution evidence with respect to this plea of the accused. Suggestions were thrown to the witnesses of the prosecution during the course of cross-examination that the accused was a mad person and that the passengers were saying so when he appeared before the bus and threatened the driver that in case he moved the bus he would be fired at. PW-2 Daulat Ram even though denied that he and other passengers had told the driver of the bus that the accused was mad, but he is contradicted by his statement, Ex. PW-1/B, which he made to the Police during the investigation of the case. He denied having made such a statement. PW-1 Jai Lal, who was also in the bus, very categorically admitted that when the accused had stopped the bus, the passengers were saying that he was mad. PW-4 Tulsi Ram, the driver of the bus, did not deny having made portion A to A of Ex. PW-4/A to the Police in which it is recorded that Daulat Ram and some other passengers had told him that the accused was mad and would himself withdraw from the road after some time. PW-5 Agya Vallabh Shastri has admitted that when Daulat Ram was trying to persuade the accused to withdraw, he had told him that he would treat him for the wrath of local deity, which he had incurred, which implied that the accused was suffering from some mental ailment. The witness also did not deny if PW-2 Daulat Ram told the driver that the accused was mad and he would himself withdraw after some time. He admitted that from the movements of the accused it appeared that he was a lunatic.

9. After the accused was overpowered by PW-3 Mohan Lal and disarmed by him with the help of other passengers, none of the passengers or PW-3 Mohan Lal or the persons who helped him in overpowering the accused used any force against him, even though in normal course, they and other passengers were supposed to have roughed him up because of his having fired a gun shot at Daulat Ram and also having detained the bus for about 4-5 hours. The reason for these persons not using any force against the accused appears to be that they knew that he was mad and the act was committed by him because of such madness.

10. The result of the above discussion is that the accused was suffering from insanity at the time when he committed the aforesaid acts and was unable to know and understand the nature thereof. Consequently, the appeal filed by the accused is accepted, the judgment of the trial Court convicting and sentencing him for the offences punishable under Sections 326, 342 IPC and Section 25 of the Arms Act, is set aside, and he is acquitted.

11. In view of the acquittal of the accused, State's appeal for enhancement of punishment is dismissed having become infructuous.

12. Both the appeals stand disposed of.

(Surjit Singh), J

October 11, 2007(sd) **(Surinder Singh), J**